THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 9th November,2006

W.P.No.8261 of 2004

Between :

M/s. Sangala Lakshmana Swamy,
Rep. by its Dealer S.Lakshmana
Swamy, Gadwal … Petitioner

and

The Joint Collector (CS),
Mahaboobnagar and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.8261 of 2004

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to quash the Order in DCS.Progs.No.E2/687/2000, dated 19-11-2003 of the 2nd respondent, wherein Proceedings No.CS1(b)/1461/99, dated 15-5-2000 of the 1st respondent were confirmed.

It appears, the petitioner is a wholesale kerosene dealer and conducting business for the last more than 10 years. While so, during the month of March,1997, the Special Squad of Vigilance Cell made a surprise check of the business premises of the petitioner and submitted a report to the 1st respondent-Joint Collector. Based on the said report, the 1st respondent issued a show cause notice dated 2-4-1997 alleging that the petitioner diverted 96 Kilo Litres of Kerosene Oil into black market during the period from January,1996 to February, 1997. Further, the petitioner was served with another show cause notice dated 1-8-1997 alleging that he had diverted 156.75 KL of Kerosene Oil to black market during the period from January,1996 to March,1997. In the meanwhile, the licence of the petitioner was suspended on 4-4-1997. Challenging the same, petitioner filed a Writ Petition and the same was disposed of by this Court directing the respondents to continue the petitioner as a wholesale kerosene dealer till the enquiry is finalized. Thereafter, the petitioner continued his dealership. However, the licence of the petitioner was cancelled by an

Order dated 30-3-1999 of the 1st respondent. Aggrieved by the same, the petitioner filed an appeal before the 2nd respondent. Respondent No.2, by an Order dated 4-9-1999 set aside the Order of the 1st respondent and remanded the matter back to the 1st respondent directing *de novo* enquiry. According to the petitioner, once again, the 1st respondent by an Order dated 15-5-2000 cancelled the licence of the petitioner reiterating the very same findings that were arrived at earlier. Questioning this order, again the petitioner preferred an appeal before the 2nd respondent on various grounds. But, the 2nd respondent, by the impugned Order dated 19-11-2003 dismissed the appeal. Therefore, the present Writ Petition.

It is the case of the petitioner that the Orders passed by the respondents are arbitrary, illegal and unsustainable. Various contentions raised by him were not properly considered by the respondents and no findings were recorded on those contentions. Therefore, the impugned Orders are liable to be set aside.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner and asserting that the impugned Orders are perfectly valid. There is no necessity of interfering with such Orders passed by the respondents.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

At the outset, it may be noticed that the sum and substance of the charge against the petitioner is that over a period of 14 months commencing from January,1996 to February,1997, in all, there was a variation of 132 Kilo Litres of Kerosene Oil as per the stock register and as per the returns submitted by the petitioner and in all, for the

following months, the petitioner has not furnished the correct Form 'C' returns.

Sl. No.	Month & Year	Actual upliftment in KLs	Qty.shown in Form-C returns in KLs	Variation in KLs (column.4 – 3)
1	Apr.1996	108	96	12
2	May,1996	108	96	12
3	June,1996	204	180	24
4	July,1996	216	180	36
5	Aug.,1996	204	192	12
6	Sept.2006	156	132	24
7	Feb.1997	156	144	12
	Total	1152	1020	132

From the above, it is seen that the petitioner has not accounted for 132 Kilo Litres of Kerosene oil in Form 'C' returns thereby violated Clause 12 of the Andhra Pradesh Petroleum Products (Licensing & Regulation of Supplies) Order,1980. Petitioner submitted his explanation stating that the allegations made against him, particularly the allegation that he had diverted 156 KLs of Kerosene into black market during the period from January, 1996 to March,1997, are baseless. In the second show cause notice dated 1-8-1997, it was alleged that 156.75 KL of Kerosene Oil was diverted during the relevant period, but the figures from the table in the said notice were quoted against each one, amounting to 132 KL. Further, when both the tables are compared only diversion of 24 KL was alleged in the month of March,1996 through the first show cause notice dated 2-4-1997. In the first show cause notice, no diversion was shown in April and May, 1996, whereas in the second show cause notice, diversion was shown as 12 KL and 24 KL respectively for the

months of April and May,1996. Similarly, for July, 1996 no diversion was shown in the first notice, whereas in the second notice, the diversion of 36 KL was shown. Thus, the diversion shown in both the show cause notices differ from each other. This itself shows that the complainant had not able to prove, by recorded evidence, of actual stocks of kerosene. What was entered in the stock register maintained by the petitioner and what was seized by the complainant is not known. Diversion alleged during the said period is 132 KLs. The registers maintained by the petitioner were seized by the complainant. Respondent No.1 herein simply relied upon the alleged letter dated 26-6-1997 of the Depot Manager, HPC, Gunthakal and the oral evidence of the Depot Manager said to have been recorded before him on the date of hearing, but the said Depot Manager was not subjected to cross-examination. In view of the remand Order dated 4-9-1999 of the 2nd respondent, the Depot Manager, HPC, Gunthakal was directed to be present before the 1st respondent on 4-11-1999. The Depot Manager, on 4-11-1999 produced the original invoices and indents in his attempt to substantiate what was stated in the letter dated 26-6-1997 as detailed below:

July, 1999	10 indents covering for 120 KL
August,1999	9 indents covering for108 KL
September,1999	9 indents covering for108 KL
October,1999	7 indents covering for 84 KL
November,1999	8 indents covering for 96 KL
December,1999	11 indents covering for132 KL
January,1997	10 indents covering for120 KL
February,1997	7 indents covering for 84 KL

In fact, the Depot Manager has not produced indent letters for all the quantities alleged to have been actually lifted by the petitioner during the period from January,1996 to February,1997 as detailed in the Table shown above. It is for the respondents to prove that he has lifted the stocks as per the invoices, but not for him to prove the same and, in

fact, he did not lift the stocks as per the invoices. There are no signatures in two invoices of March,1996, which itself shows that the invoices by themselves cannot prove that his representative alone has lifted the stocks as per the invoices produced by the Depot Manager for the relevant period. The Oil Companies can never release the stocks of Kerosene Oil beyond the allotment order made by the concerned Joint Collector of the District. In the Circulars issued from time to time, the Oil Companies were furnished with an Annexure to be submitted to the Collectors as well as the Commissioner of Civil Supplies every month. In the said Annexure, it is specifically stated that the allotment by the Company, oil lifted from the Depot by the dealer, quantity shown in C-Form Returns and variations, if any, should be furnished to the Collector as well as the Commissioner of Civil Supplies for each month from April,1994 onwards. The Depot Manager has failed to produce such annexures for the period from January,1996 to February,1997. In the absence of production of such Annexures, the evidence of the Depot Manager cannot be relied upon. However, after considering the various aspects, the 1st respondent-Joint Collector found that the charges are proved in full and as such, confirmed his earlier Order dated 30-3-1999. On appeal, the 2nd respondent found that no interference can be made into the Orders passed by the 1st respondent and dismissed the appeal.

However, learned counsel for the petitioner strenuously contended that the Proceedings under Section 6-A of the Essential Commodities Act,1955 (for short 'the Act') initiated against the petitioner for the very same irregularities purported to have been committed by the petitioner were dropped and further, the criminal case booked for the very same charges in S.T.C.No.8 of 1998 on the

file of the learned Special Judge for Trial of Cases under Essential Commodities Act-cum-III Additional Metropolitan Sessions Judge, Hyderabad, ended in acquittal on 3-7-2002. Therefore, the respondents have to reconsider the matter in the light of dropping of the proceedings under Section 6-A of the Act and in view of the acquittal recorded in S.T.C.No.8 of 1998.

In the facts and circumstances of the case, without expressing any opinion on merits, the 1st respondent is directed to consider for restoration of wholesale kerosene licence of the petitioner in the teeth of findings recorded in S.T.C.No.8 of 1998 and also the findings recorded while dropping the Proceedings under Section 6-A of the Act and pass fresh orders, as per law, within a period of two months from the date of receipt of a copy of this order and communicate the same to the petitioner.

Accordingly, the Writ Petition is disposed of. No order as to costs.

09-11-2006

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